

**Application for Determination of  
Employee Stock Ownership Plan**  
(Under section 409 or 4975(e)(7) of the Internal Revenue Code)  
▶ Attach to Form 5300.

**For IRS Use Only**

Department of the Treasury  
Internal Revenue Service

1 Name of employer or plan sponsor	2 Employer identification number	3 Three-digit plan number
------------------------------------	----------------------------------	---------------------------

4 This application is for (complete one):

a  A tax credit employee stock ownership plan under section 409

b  An employee stock ownership plan under section 4975(e)(7)

5 Type of plan:

a  Profit-sharing                      b  Stock bonus                      c  Money purchase and stock bonus

		Yes	No
<b>All Plans</b> (Complete lines 6a through 6h.)			
6a Is the plan designed to invest primarily in employer securities as defined in section 409(l)?			
6b Is each participant entitled to direct the plan to vote the allocated securities as required by section 409(e)?			
6c Does the plan provide that each participant who is entitled to a distribution from the plan has a right to demand that the benefit be distributed in the form of employer securities, and, if the securities are not readily tradable on an established market, can the participant require the employer to repurchase the securities under a fair valuation formula within the time frames prescribed by law? (See section 409(h).)			
6d If the charter or bylaws of the corporation restrict stock ownership to employees or the ESOP, does the plan provide that participants are entitled to receive distributions in cash? (See section 409(h)(2).)			
6e If the plan is maintained by an S Corporation, does the plan provide that participants are entitled to receive distributions in cash? (See section 409(h).)			
6f Does the plan provide that a participant may elect to diversify a portion of his or her account investment in employer securities, as required by section 401(a)(28)(B)?			
6g With respect to activities that are carried on by the plan, are all valuations of employer securities acquired after December 31, 1986, which are not readily tradable on an established securities market made by an independent appraiser? (See section 401(a)(28)(C).)			
6h Does the plan provide that a participant may begin receiving a distribution of his or her account that is attributable to employer securities acquired after December 31, 1986 (within the guidelines of section 409(o)) after reaching normal retirement age, or after death, disability, or other separation from service?			
<b>Plans Applying Under Section 409</b> (Complete lines 7a and 7b.)			
7a Do the participants have a nonforfeitable right to the securities allocated to them?			
7b Does the plan provide that, even if the employee plan or ESOP credit is recaptured or redetermined, amounts transferred to the plan for such credit shall remain in the plan and, if allocated, shall remain allocated?			
<b>Plans Applying Under Section 4975(e)(7)</b> (Complete lines 8a through 9.)			
8a Is the plan designed as an ESOP within the meaning of section 4975(e)(7)?			
8b Does the plan provide that the exempt loan proceeds must be used within a reasonable time to acquire qualifying employer securities, repay such loan, or repay a prior loan as required under Regulations section 54.4975-7(b)(4)?			
8c Does the plan provide for the establishment and maintenance of a suspense account as required under Regulations section 54.4975-11(c)?			
8d Does the plan provide that the collateral must be limited to qualifying employer securities purchased with such exempt loan or a prior exempt loan as required under Regulations section 54.4975-7(b)(5)?			
8e Does the plan provide that no person entitled to payment under an exempt loan shall have any right to assets of the ESOP other than collateral given for such loan, contributions (other than contributions of employer securities) made to repay such exempt loan, and earnings attributable to such collateral and the investment of such contributions as required under Regulations 54.4975-7(b)(5)?			
8f Does the plan provide that payments made with respect to an exempt loan by the ESOP during the year must not exceed an amount equal to the sum of contributions and earnings received during or prior to such year less such payments in prior years as required under Regulations 54.4975-7(b)(5)?			
8g Do plan terms provide that qualifying employer securities will be forfeited only after other assets as required under section 54.4975-11(d)(4)?			
8h Are the participants' rights to plan assets acquired by use of the exempt loan protected as specified in Regulations section 54.4975-11(a)(3)(i) and (ii)?			
9 If the plan is applying under section 409(n) with respect to transactions under section 1042, does the plan provide that the assets of the plan attributable to employer securities acquired by the plan (in a sale to which section 1042 applies) cannot accrue for the benefit of the persons specified in section 409(n) during the nonallocation period?			
10 Does the plan provide that no portion of the assets attributable to employer securities in an S Corporation may, during a nonallocation year, accrue to the benefit of a disqualified person? (See section 409(p).)			

**Sign Here**

**Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.**

Signature	Date	Title

## What's New

An S corporation–sponsored ESOP must provide that no prohibited allocation of employer stock may be made to a disqualified person for a nonallocation year. This applies to all plan years beginning on or after January 1, 2005. This also applies to plan years ending after March 14, 2001, if:

1. The ESOP was established after March 14, 2001 or
2. The ESOP was established on or before March 14, 2001, if the employer maintaining the ESOP had not made an S corporation election in effect on such date.

## General Information

*Section references are to the Internal Revenue Code unless otherwise noted.*

Use this form to apply for a determination letter for either a tax credit employee stock ownership plan that meets the requirements of section 409, or an employee stock ownership plan (ESOP) that meets the requirements of section 4975(e)(7). Attach Form 5309 to Form 5300.

The plan you establish must be designed to invest primarily in employer securities. For a definition of employer securities and how it applies to your plan, see section 409(l) or section 4975(e)(8). Also see Regulations section 54.4975-11 for the formal plan requirements of an ESOP, and Regulations section 1.46-8(d) for the formal requirements of a tax credit employee stock ownership plan.

## General Instructions

### Who May File

1. Any corporate employer who has established an ESOP intended to meet the requirements under section 4975(e)(7).
2. Any corporate employer who amends an ESOP under section 409 or 4975.

### What To File

To receive a determination on whether a plan, initially or as a result of a plan amendment, meets the requirements of section 409 or 4975(e)(7), submit Form 5309, Form 5300, and a copy of all documents and statements required by those forms. Attach the completed Form 5309 to Form 5300.

### Signature

Form 5309 must be signed by the principal officer authorized to sign.

### Privacy Act and Paperwork

**Reduction Act Notice.** We ask for the information on this form to determine whether you meet the legal requirements for the plan approval you request. Your filing of this information is only required if you wish the IRS to determine if your plan qualifies under section 409 or 4975(e)(7).

Section 6109 requires you to provide your taxpayer identification number (SSN or EIN). If you fail to provide this information in a timely manner, you may be liable for penalties and interest. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities,

states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, or to federal and state or local agencies to enforce federal nontax criminal laws and to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . 6 hr., 42 min.

**Learning about the law or the form** . . . 2 hr., 17 min.

**Preparing and sending the form to the IRS** . . . . 2 hr., 29 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224.